

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN BROADCASTING
COMPANIES, INC., DISNEY ENTERPRISES,
INC., CBS BROADCASTING, INC., CBS
STUDIOS INC., NBCUNIVERSAL MEDIA,
LLC, NBC STUDIOS, LLC, UNIVERSAL
NETWORK TELEVISION, LLC,
TELEMUNDO NETWORK GROUP LLC, and
WNJU-TV BROADCASTING LLC,

Plaintiffs/Counterclaim Defendants,
v.

AEREO, INC.

Defendant/Counterclaim Plaintiff.

Civil Action No. 12-CV-1540 (AJN)

WNET, THIRTEEN, FOX TELEVISION
STATIONS, INC., TWENTIETH CENTURY
FOX FILM CORPORATION, WPIX, INC.,
UNIVISION TELEVISION GROUP, INC.,
THE UNIVISION NETWORK LIMITED
PARTNERSHIP, and PUBLIC
BROADCASTING SERVICE,

Plaintiffs/Counterclaim Defendants,
v.

AEREO, INC.

Defendant/Counterclaim Plaintiff.

Civil Action No. 12-CV-1543 (AJN)

NOTICE OF RELATED CASE

Pursuant to Rule 1.6 of the Local Rules of the United States District Court for the Southern District of New York and Rule 13 of the Rules for the Division of Business Among District Judges, Local Rules of the United States District Court for the Southern District of New York, Defendant Aereo, Inc. (“Aereo”) hereby brings to the Court’s attention a case that it filed on May 6, 2013, *Aereo, Inc. v. CBS Broad., Inc.*, 13-Civ-3013 (S.D.N.Y.), seeking declaratory relief in response to the threats of CBS Broadcasting, Inc. and CBS Studios, Inc. (both Plaintiffs in the above-captioned consolidated actions) to sue Aereo in each market to which it expands (the “Aereo DJ Case”) (Complaint attached as Exh. A). The Aereo DJ Case is closely related to the above-captioned consolidated cases and, accordingly, Aereo believes should be heard by Judge Nathan.

In the above-captioned consolidated actions before the Court, Plaintiffs advanced copyright claims against Aereo with respect to the Aereo technology and also moved for a preliminary injunction against Aereo, claiming that Aereo infringes their asserted exclusive right to publicly perform their copyrighted works. The Court denied the motion, ruling that the networks were unlikely to succeed on the merits of their claims and the United States Court of Appeals for the Second Circuit affirmed that decision in favor of Aereo. *See Am. Broad. Cos., Inc. v. Aereo*, 874 F. Supp. 2d 373 (S.D.N.Y. 2012); *WNET, Thirteen v. Aereo, Inc.*, Nos. 12-Civ-2786, 12-Civ-2807, 2013 WL 1285591, at *1. Aereo brought declaratory judgment counterclaims against Plaintiffs in the above-captioned consolidated actions.

Despite the pendency of the consolidated cases and perhaps in view of having lost its preliminary injunction motion in the District Court and on appeal, CBS (two CBS entities are among the Plaintiffs in the above-captioned consolidated actions before the Court) has now announced that it intends to file suit against Aereo in each jurisdiction where Aereo subsequently

makes its technology available to consumers. For example, on April 23, 2013, Aereo publicly announced its plans to launch its technology in Boston, Massachusetts on May 15, 2013. *See* Exh. C to the Aereo DJ Case Complaint (Aereo Press Release). In response to Aereo's announcement, Leslie Moonves, the President and Chief Executive Officer of CBS Broadcasting, reportedly stated that wherever Aereo expands from its first market in New York, "we'll follow" Aereo and "we'll sue them again" in those markets. Exh. D to the Aereo DJ Case Complaint (Deadline Hollywood Article). Similarly, Dana McClintock, CBS Broadcasting's Executive Vice President of Communications, stated on his Twitter feed that "We will sue" in Boston, and that "Stealing our signal will be found to be illegal in Boston, just as it will be everywhere else." Exh. E to the Aereo DJ Case Complaint (McClintock Twitter Feed) at 6.

Aereo believes that it is not proper for the broadcasters to attempt to essentially re-litigate this case seriatim. Thus, in light of CBS's express threats to do exactly that, on May 6, 2013, Aereo filed the Aereo DJ Case against CBS Broadcasting, Inc., CBS Studios, Inc. (both Plaintiffs in the above-captioned 12-CV-1540 case) and additional CBS parties involved in the operation of television stations seeking a declaratory judgment that use of Aereo's technology does not infringe Plaintiffs' copyrights. The Aereo DJ Case is related to the above-captioned consolidated cases because it involves the same Aereo technology, involves the same witnesses, implicates the same legal and factual issues, and shares some of the same parties (*e.g.*, CBS and Aereo). We believe that Judge Nathan should hear the Aereo DJ Case as well, in order to avoid unnecessary duplication of judicial effort. Judge Nathan has substantial experience with the factual and legal issues that are presented in that action, as they are the same issues presented in the above-captioned consolidated actions.

Aereo intends to file a motion in the Aereo DJ Case pursuant to Fed. Rule of Civ. P. 42 to consolidate the Aereo DJ Case with the above-captioned consolidated cases as soon as is practicable.

Dated: May 6, 2013

Respectfully submitted,

AEREO, INC.

By its attorneys,

/s/ R. David Hosp

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies, via first class mail, postage pre-paid, will be sent to those indicated as non-registered participants on May 6, 2013.

/s/ R. David Hosp
R. David Hosp